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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/725,048
Filing Date: December 01, 2003
Appellant(s): HOLCOMB ET AL.

G. Haas
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 28 October 2005 appealing from the Office action mailed 30 March 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appellant's appeal in continuation application 10/756,475.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is substantially correct. The amendment after final rejection filed on 25 May 2005 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

- a. Claims 1, 5, and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,257,664 B1 to Chew et al.

- b. Claims 2-4, 6 and 12-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chew et al. in view of U.S. Patent No. 5,370,444 to Stulik.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,257,664 B1	CHEW et al.	7-2001
5,370,444	STULIK	12-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 5, and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Chew et al. Claims 2-4, 6, and 12-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chew et al. in view of Stulik. The rejections were set forth in a prior Office Action, mailed on 30 March 2005.

(10) Response to Argument

With respect to independent claim 1, Appellant argues that Chew et al. fail to teach a cushion having a body which stretches and contracts to conform to alteration of the curvature of the shell. Please note, Appellant's remarks regarding U.S. Patent No. 5,593,211 to Jay et al. to interpret a well known cushion is not applicable to the

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teachings set forth in Chew et al. Initially, Appellant argues that Chew et al. does not specify that one or more seat back components are covered by the same piece of foam. However, this limitation is not recited or implied in claim 1. The limitation merely requires that the cushion body stretches and contracts to conform to alteration of the curvature of the shell. Figures 1-3 of Chew et al. show that the shell has a back panel 15 with one or more rigid shells 20 that are curved to conform to the back of the user and optional lateral stabilizers 19 wherein each component is formed from molded polyvinyl chloride or metal. The disclosure of Chew et al. clearly sets forth that the components of the back panel are collectively or separately covered with a compressible foam. Therefore, the cushion body covering the rigid shell 20 must stretch and contract to conform to the alteration of the curvature along the spinal channel 56, which meets the claim 1 limitation. In addition, the components of the seat back are bent and adjusted by a user leaning against the seat back, which would inherently stretch and contract the cushion body attached to the components. In general, Appellant has interpreted claim 1 to require structural limitations that are not required or implied by the claim.

Secondly, Appellant argues that Chew et al. fail to meet the claim 1 limitation because Chew et al. recites that the foam of the lateral supports are *scarfed* so as to permit adjustability of the supports (see claim 9 of Chew et al.). Appellant interprets this limitation of Chew et al. to imply that the foam of the lateral supports are separate bodies overlapping the foam of the back member to allow sliding or pivoting of the foam bodies with respect to each other. *Merriam Webster's Collegiate Dictionary, Tenth*

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Edition defines scarf as to unite by a scarf joint, and defines a scarf joint as a joint made by chamfering, halving, or notching two pieces to correspond and lapping and bolting them. See Diagram A below. Therefore, the claim 9 limitation of Chew et al. establishes that the cushion body must stretch and contract to conform to alteration of the curvature of the shell as the lateral support are adjusted outwardly because the foam bodies would be bolted and/or bonded together as a scarf joint.

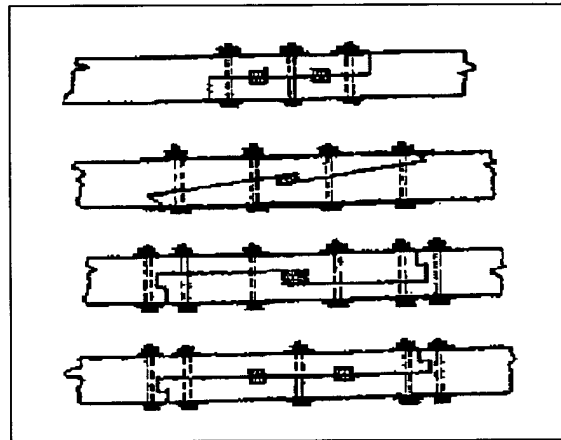


Diagram A - Scarf Joint Illustration from page 1039 of *Merriam Webster's Collegiate Dictionary, Tenth Edition*

Even if one were to interpret the scarfed limitation of Chew et al. as Appellant has done, this would still meet the claim 1 limitation of the instant application because the overlapping foam bodies would stretch and contract as the lateral supports are adjusted inwardly and outwardly. See Diagram B below. Therefore, Chew et al. establishes that the foam of the cushion body stretches and contracts to conform to alteration of the curvature of the shell.

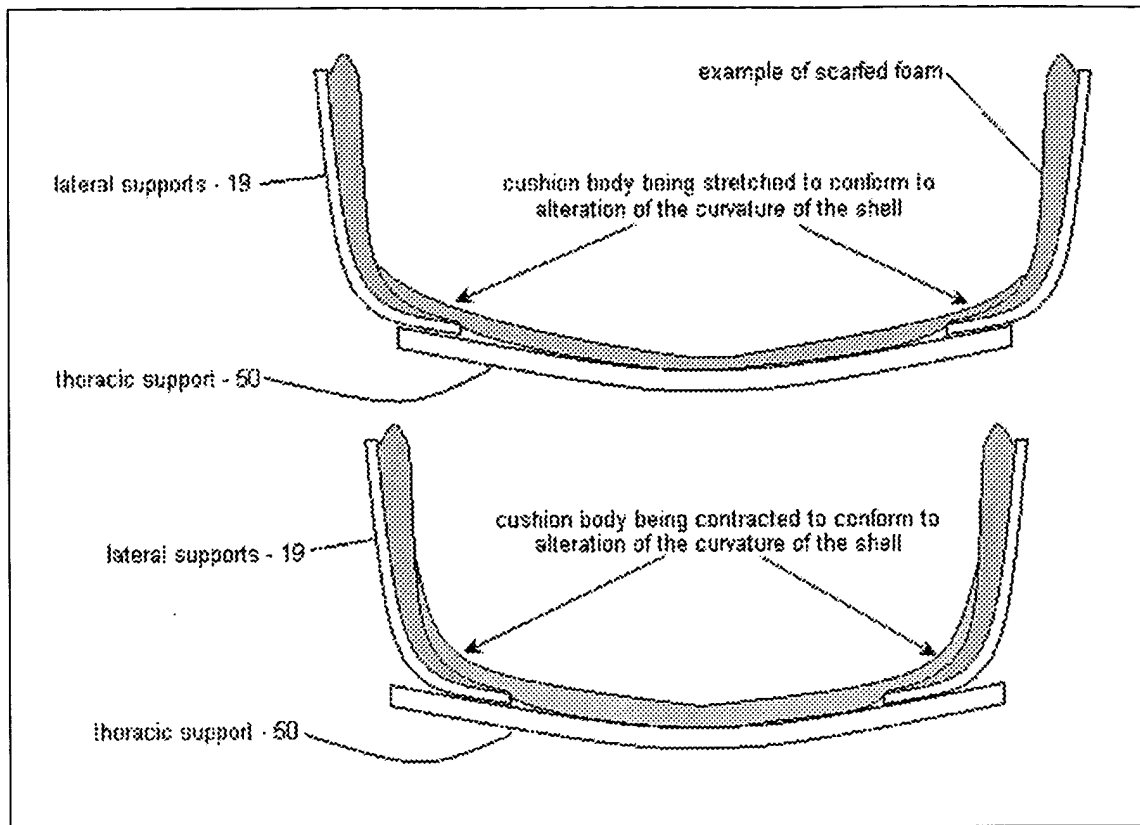


Diagram B - Annotated Cross-Section of Seat Back shown in Figure 3 of Chew et al. wherein the lateral support are adjusted outwardly and including scarfed foam bodies of claim 9

With respect to independent claim 12, Appellant argues that Chew et al. fail to teach a shell wherein the back panel of the shell has first and second lateral panels projecting in a forward direction. Specifically, Appellant argues that the curved back panel of Chew et al. is only gradually curving and lacks separately defined central and lateral portions. However, it is not necessary for Chew et al. to specifically point out every feature contemplated by Appellant with a separate reference numeral in order to read on the claim limitations. The teachings of Chew et al. are applicable to the Appellant's claim, so long as the claim limitations are shown in Chew et al. See Figure

2 of Chew et al. which clearly shows that the lateral portions of the seat back project forward from the central back panel. Therefore, Chew et al. teaches first and second lateral panels projecting in a forward direction. Appellant's dependent claims 2 and 7 also include this limitation which was properly rejected in the Office Action of 30 March 2005.

With respect to independent claims 12 and 18, Appellant argues that the combination of Chew et al. in view of Stulik is improper because it would not have been obvious to modify the seat back of Chew et al. in view of the seat back of Stulik having a linearly adjustable support section. Appellant correctly sets forth that Stulik does not teach lateral or side-to-side adjustment of the seat back. Also, Examiner acknowledges that the prior art of record must either impliedly or expressly suggest the selection of various elements in the combination. In this instance, Stulik expressly suggests that a seat cushion with pleated sections provides a unique extendable seat cushion that may be easily collapsed or extended (see column 1, lines 64-68 and column 2, lines 1-7), which avoids the undesirable drawbacks of the prior art that requires multiple pieces of cushion elements that must be sewn together (see column 1, lines 39-49). While the preferred embodiment of Stulik is drawn toward a seat back that adjusts to accommodate operators of varying heights, one of ordinary skill would have been motivated by the teachings of Stulik to modify seat cushions of seat backs with multiple sections that adjust in any direction. Also, column 2, lines 22-32 of Stulik further points out other embodiments, such as office chairs, automobile seats, and equipment seats,

that the seat cushion may have utility wherein the objective is to provide a seat cushion that is easily adjustable and has an aesthetically pleasing appearance.

In addition, Appellant argues that modifying Stulik would not be obvious because it would require the pleated sections to be rotated 90 degrees, the shell to be curved, and the pleated sections to be located on both lateral sides of the seat back. However, Examiner is relying on the teachings of Stulik to modify these structural features which are already present in Chew et al. Also, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Therefore, the combination of Chew et al. in view of Stulik is proper.

With respect to dependent claim 6, Appellant argues that Stulik fails to teach a cover of stretchable material because Stulik specifies that the cover may be made of cloth or vinyl upholstery material, which is not inherently stretchable. However, Appellant has interpreted this limitation to require far too much structural characteristics. *Merriam Webster's Collegiate Dictionary, Tenth Edition* defines stretch as to extend in length. Accordingly, Examiner reasonably interprets the limitation "stretchable material" as a material capable of extending in length. Figures 2 and 3 of Stulik clearly show that the cloth cover 11 is a material that extends in the length as the seat portions are extended into a lengthen position. Moreover, Examiner maintains that any cloth material inherently is stretchable to some degree. While the material of Stulik may stretch in a different manner or to a lesser extent than the material specified in the

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instant application, the cover of Stulik still meets the limitation recited in claim 6.

Appellant's dependent claims 14 and 19 also include this limitation which was properly rejected in the Office Action of 30 March 2005.

With respect to dependent claim 11, Appellant argues that the fastener arrangement of Chew et al. fails to disclose a threaded fastener connecting the hook portion 35 and bracket 26. However, Figure 6 of Chew et al. clearly shows that the pin projecting from the bracket 26 may be a threaded fastener. Also, Figure 8 of Chew et al. shows that the pin 33' is secured to the bracket 26 via a slot in the mounting member 32'. See Diagram C below. Because the pin 33 passes through the aperture 39 of the hook portion 35 (see Fig. 10) and the slot of the bracket 26, Chew et al. teaches all the limitations of claim 11.

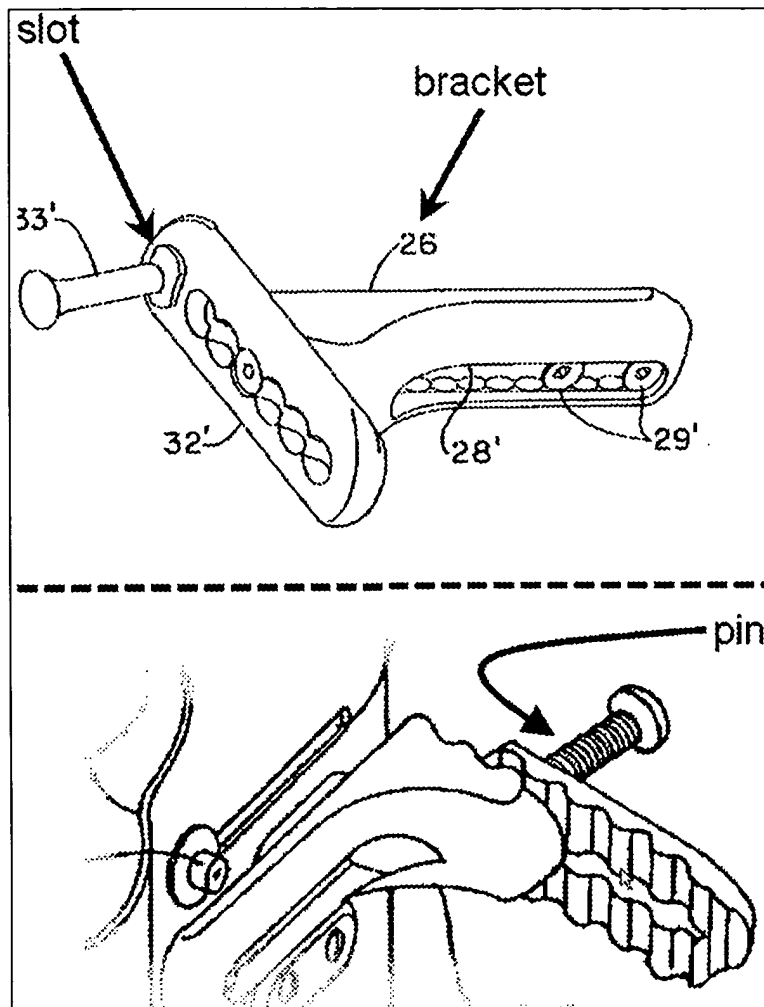


Diagram C - Annotated Figures 6 and 8 of Chew et al.

With respect to dependent claims 3-5, 8-10, 15-17, and 20-22, Appellant merely argues that these claims are patentable because Chew et al. fail to anticipate independent claim 1, and independent claims 12 and 18 are patentable over Chew et al. in view of Stulik. With respect to claim 13, Appellant reiterates the arguments pertaining to claim 1, which were address above. Accordingly, Examiner maintains the rejections of claims 1-22 as set forth in the Office Action mailed 30 March 2005.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Joe Edell



Conferees:

Peter Cuomo



Milton Nelson



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